IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5679 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

KALPANA PAREEK D/O. JAGDISH PRASAD PAREEK

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 5679 of 2002

MR JITENDRA MALKAN for Petitioner No. 1

..... for Respondent No. 1-3

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 21/06/2002

ORAL JUDGEMENT

1. The petitioner is a student. She has applied for Engineering/Pharmacy Degree/Diploma Course to the Centralized Degree Admission Committee, L.D. College of

Engineering, Ahmedabad. The Committee accepted her application and she was given Registration No.CV-OP-0047. Her name appeared at Sr.No.260 in open merit list notified by the Admission Committee respondent No.3. Thereafter she was asked to appear before the Committee for counseling for admission on 24.9.2001. She indicated that she was interested in Pharmacy Degree Course. She was found to be eligible for admission to the Engineering Course as her name appeared in Merit List No.260 and she was informed that the candidates upto Sr.No.377 in the merit list are likely to get admission in Pharmacy Course. However, the respondent No.3 Committee dropped her name on the ground that she failed to produce "DOMICILE CERTIFICATE" of the State of Gujarat by letter dated 13.7.2001 Annexure : D. the same is challenged by way of this petition.

2. Learned Counsel Shri Malkan for the petitioner submitted that under clause 3.8 the children of the Government Officers are entitled, but not all the persons who are in private institution or companies. The same is violative of Article 14 of the Constitution of India.

3. The petitioner has prayed in this petition to issue a writ of mandamus or any other writ order or direction directing the respondent No.1 Union of India to appoint High Power Committee to examine into the anomaly in the rules pertaining to "DOMICILE" for admission in 1st Year of Engineering/Pharmacy Degree/Diploma Course by educational institutions all over the Country, to suitably amend the rules pertaining to "DOMICILE" so as to resolve anomaly rendering a student like the petitioner ineligible to admission for want of "DOMICILE CERTIFICATE' by the University/Educational Institution all over the country.

4. Learned Counsel Shri Malkan, relying upon the Judgment of the Hon'ble Supreme Court in the case of AHMEDABAD MUNICIPAL CORPORATION V/S. NILAYBHAI R. THAKORE & ANR., reported in 2000(1) GLR 634, submitted that suitable direction be issued to the respondents to amend the rule so that the petitioner and others similarly situated to the petitioner can get the admission.

5. In the case of Ahmedabad Municipal Corporation v/s. Nilaybhai (supra) the Corporation held Rule : 7 whereby "Local Student" defined and as per the said Rule only those students who qualified from Educational Institution situated within the Municipal limit were eligible to be treated as local student, while the

permanent residence of Ahmedabad city who for fortuitous reasons, happen to acquire qualification from educational institutions situated just outside the municipal limits, namely, A.U.D.A.were not found eligible for being treated as local students. The object of the Rule was to provide medical education to the students of Ahmedabad who have acquired the necessary qualifications, their selection being based on merit. The said Rule was held to be ultravires by this Court and struck down. The matter was carried in SLP before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court held that the High Court was justified in coming to the conclusion that the classification made under Rule 7 of the impugned Rules amounts to an arbitrary classification, hence cannot be sustained in law. However, the Supreme Court held that though the Court cannot enter into the arena of enacting laws but it can certainly iron out the creases. Rule for admission to Municipal college given purposive meaning.

6, Their Lordships have relied upon the famous Judgment delivered by Lord Denning in the case of SEAFORD COURT ESTATES LTD. vs. ASHER, 1949 (2) All ER 155 (CA) wherein it was held that ...

> "{w}hen a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament,... and then he must supplement the written word so as to give 'force and life' to the intention of the legislature... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

7. The aforesaid pronouncement of law made by Lord Denning way back in 1949 has been consistently followed by the Hon'ble Supreme Court in the case of M.Pentiah v. Muddala Veerampallappam, AIR 1961 SC 1107, right upto today. The Hon'ble Supreme Court in the case of S.Gopal Reddy v/s. State of A.P. 1996(4) SCC 596 : AIR 1996 SC 2184 followed the same.

8. Thus, Nilay's case (Supra) the Hon'ble Supreme Court reversed the decision of the Gujarat High Court whereby Rule : 7 was struck down and held that the striking down of the rule amounts opening the doors of the institution for admission to all the eligible candidates in the country which would definitely be

opposed to the very object of the establishment of the institution by a local body. The Supreme Court further observed that rarely a local body considers it as its duty to provide higher and professional education and in this case, the Municipality of Ahmedabad should be complimented for providing medical education to its resident students for the last 30 years or more, which has complied with its constituional obligation by providing 15 % of the seats available to All India merit students. Its desire to provide as many seats as possible to its student is a natural and genuine desire emanating from its municipal obligations which deserves to be upheld to the extent possible. Accodingly, the Honourable Supreme Court re-wrote Rule : 7 which is as under :

"Local student means a student who has passed HSC (sic SSC/New SSC Examination and the qualifying examiantion from any of the High Schoolsor Colleges situated within the Ahmedabad Municipal Corporation limits and includes a permanent resident student of the Ahmedabad Municipality who acquires the above qualifications from any of the High Schools or Colleges situated within the Ahmedabad Urban Development Area."

9. In view of aforesaid judgment of the Hon'ble Supreme Court in the case of Ahmedabad Municipal Corporation v/s. Nilay (Supra) there is hardly any scope to issue any such direction which is prayed for in this petition.

Before approaching this Court the petitioner has made representations to the Hon'ble Prime Minister and the Education Minister of the State. If the petitioner is so advised then she can approach the appropriate Authority for modifying/adding the Rule by which the children of the private persons may also be entitled to get admission.

With this observation this petition is disposed of.

sd/-

Date : June 21, 2002 (B.J.Shethna, J.)

sas